

# *Strategies to operationalise the housing, land and property rights of the displaced.*

*Experiences from Kosovo*

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**Housing and Property Restitution in Sri Lanka  
Learning from Other Jurisdictions, COHRE November 2007**



In line with the Bosnia and Herzegovina **Dayton Agreements** (1995), **UN Sec. Council Res. 1244** (1999) set a **high standard**: affirmed the right of displaced persons and refugees to return home and recover their possessions.

Recent developments (‘**Pinheiro Principles**’, ‘**UN Reparation Principles**’), promote its effective justiciability through domestic institutions and/or *ad hoc* mechanisms.

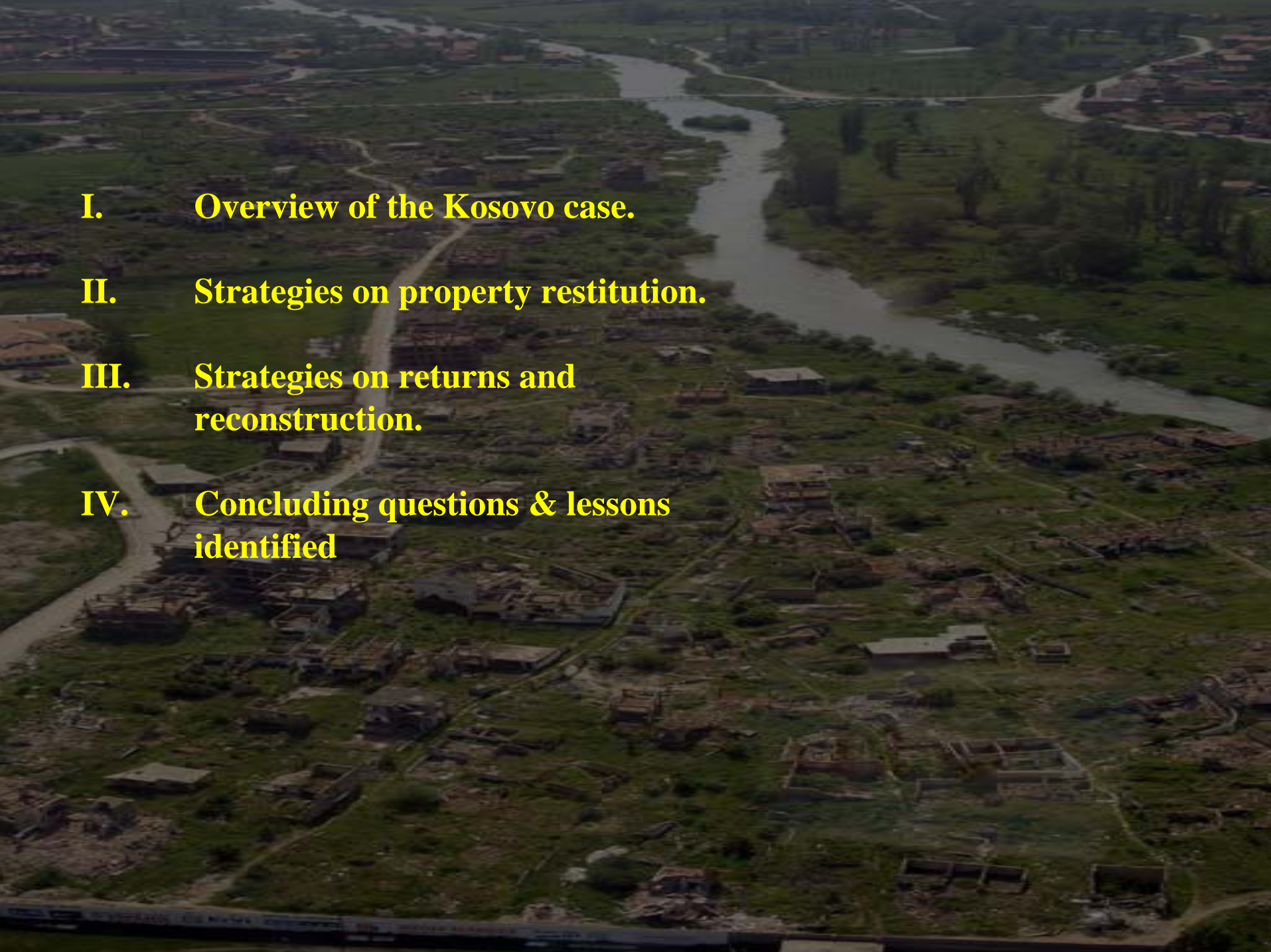
Eight years after the war, while residential property claims have been solved, the promise of returns has not been fulfilled for ethnic minorities. The resolution of the approximately 30,000 residential property claims has only partially provided a remedy.

Restitution has generally led to sales and/or administration of properties. Destroyed property of minorities remain unaddressed. Many landless Roma are disenfranchised.



**Currently, the Kosovo Property Agency (ex-Housing and Property Directorate) is addressing claims on non-residential property.**



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- An aerial photograph of a rural landscape. A wide, light-colored river or canal winds from the top center towards the right side of the frame. The surrounding land is green, likely grass or crops, with numerous small, dark-roofed buildings scattered across the terrain. Some buildings appear to be in various stages of construction or reconstruction. The overall scene suggests a rural area, possibly in a region affected by conflict or natural disaster, given the context of the text.
- I. Overview of the Kosovo case.**
  - II. Strategies on property restitution.**
  - III. Strategies on returns and reconstruction.**
  - IV. Concluding questions & lessons identified**

# I. Short overview of the Kosovo case

## *RELATED CHRONOLOGY*

- **1989-1999 – discriminatory period:** Milošević regime enacts laws and policies which dispossess Kosovo Albanian individuals of their rights over socially owned apartments and prevent them from lawfully buying Kosovo Serb immovable property.
- **Pre and post-1999 waves of displacement.** 1999 conflict displaces close to 800,000 persons. 80,000 houses are destroyed. When the majority returns the minorities (Kosovo Serbs, Kosovo Roma/Ashkaeli and Egyptians) flee. Between 100,000 and 200,000 thousand leave their homes behind. In March 2004, rioters displace 1200 minority persons.
- **UNMIK.** In 1999, a UN interim administration mandated by UN SC 1244 takes the responsibility to ensure restitution and returns in a complex legal and political scenario.
- **HPD.** Between 1999 and 2007 the Housing and Property Directorate and the Housing and Property Claims Commission address 30,000 conflict related residential property claims.
- **KPA.** In 2006, the HPD is transformed into a **Kosovo Property Agency** with the additional mandate to resolve claims over agricultural and commercial property. Decisions are subject to be appeal to the Supreme Court of Kosovo. KPA has taken to date close to 30,000 claims (see [www.kpaonline.org](http://www.kpaonline.org))
- **UN OCRM.** Between 2002 and 2006, a UN Office of Communities Returns and Minorities oversees the development and implementation of return and reintegration projects. 16,000 minority individuals return (less than 1/4<sup>th</sup> of the displaced).
- **Transfer of competencies.** In 2005, after the turmoil created by the March 2004 riots, which displaced an additional 1200 minorities, a domestic Ministry of Communities and Returns is created to take over the responsibilities of OCRM. An initial period dominated by mismanagement and corruption prevents a successful process.

# I. Short overview of the Kosovo case

## *Legal framework and special nature of rights involved:*

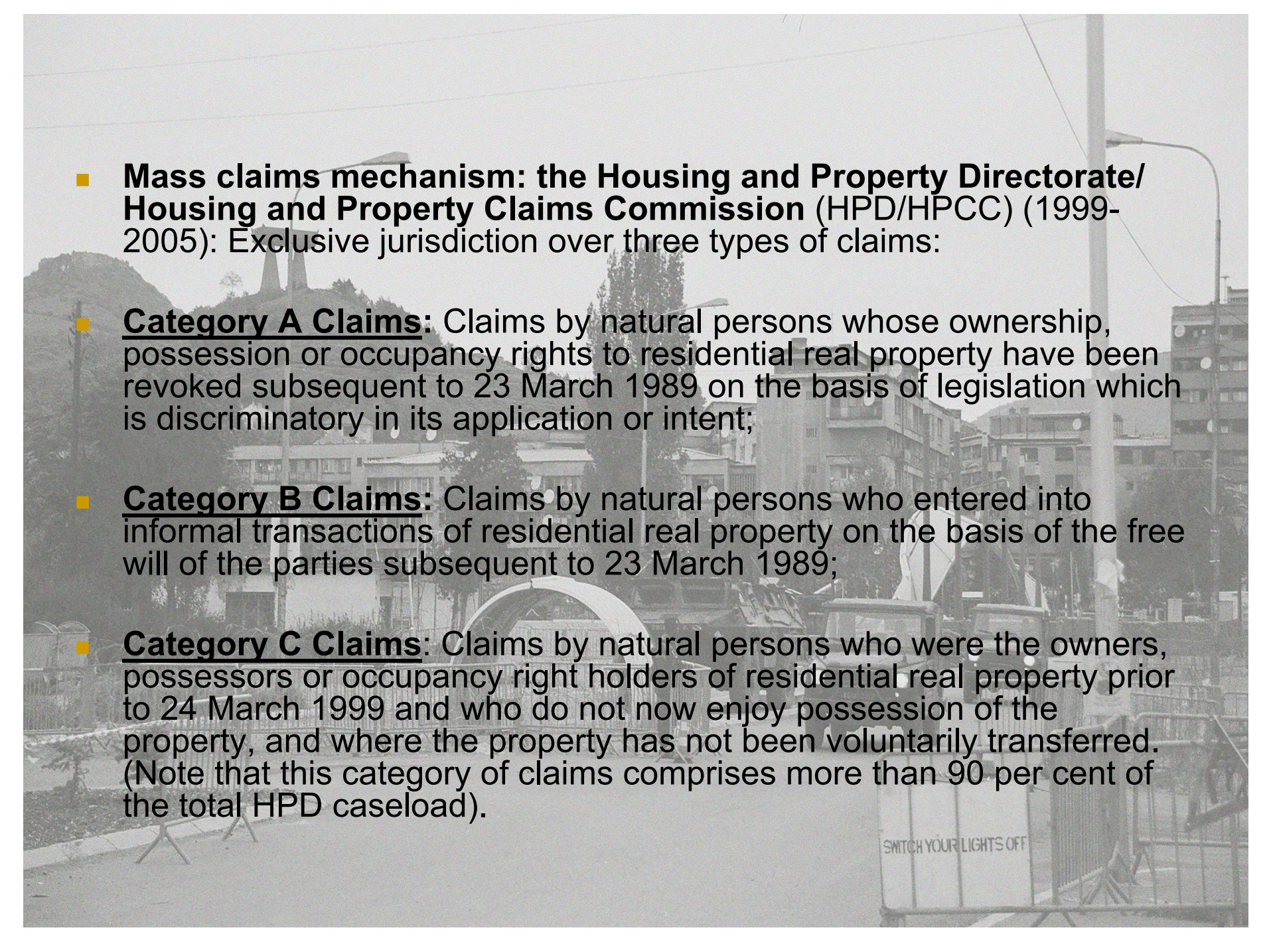
- **Socially owned property.** A category on its own, Socially Owned Property is a 'left over' from the Yugoslav socialist system. A regime which aimed to establish a society where all individuals could use means of production for both personal and common interests: A 'society ruled by the workers' leading to the disappearance of the state. Municipalities continue to have a limited competency to manage '*municipal property*': socially owned property over which the municipality has a registered right of use.
- **Residential occupancy rights.** Enterprises allocated an 'occupancy right' to its workers. Rights of disposal of these apartments are restricted. The allocation rights of Socially Owned Enterprises were suspended by UNMIK in 2000.
- **Private ownership and user rights.** (Law on Basic Property Relations).
- **Post 1999 framework:** UNMIK Regulation 1999/24 On the Law Applicable in Kosovo:

1.1 The law applicable in Kosovo shall be:

- (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and
- (b) The law in force in Kosovo on 22 March 1989.

In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence.



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- **Mass claims mechanism: the Housing and Property Directorate/ Housing and Property Claims Commission (HPD/HPCC) (1999-2005):** Exclusive jurisdiction over three types of claims:
  - **Category A Claims:** Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;
  - **Category B Claims:** Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;
  - **Category C Claims:** Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not been voluntarily transferred. (Note that this category of claims comprises more than 90 per cent of the total HPD caseload).



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## II. Strategies on property restitution

**The Kosovo Property Agency (KPA)** was established in 2006 (UNMIK [Regulation No. 2006/10](#), On the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property. Amended by UNMIK Regulation 2006/50).

Structure:

**Executive Secretariat:** Organizing the registration of claims and replies to claims, the notification of parties and the preparation of claims and replies to claims for consideration by the Commission. The Executive Secretariat is in addition vested with the authority to dismiss claims that are manifestly not receivable and clearly not within the scope of the jurisdiction of the KPA.

**Supervisory Board:** The Supervisory Board supervises the work of the KPA and provides it with administrative oversight, overall direction and policy guidance, but it will not participate in the process by which the Commission adopts its decisions on individual claims. The Board is composed of five members who are appointed by the SRSG with two of these members nominated by the Prime Minister.

**Kosovo Property Claims Commission (KPCC):** The KPCC is composed of three members - two international and one national – who are appointed by the SRSG and who designate one of the members as the chairperson. The KPCC is vested with the competence to reach a decision on the claimed property in relation to title, property use rights and lawful possession rights. The decision of the KPCC on a claim shall be legally binding, subject to the right of appeal to the Supreme Court of Kosovo.

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## II. Strategies on property restitution

**Jurisdiction:** UNMIK Regulation 2006/50, establishes the competence of the KPA over two types of claims:

- ownership claims with respect to private immovable property, including agricultural and commercial property, and
- claims involving property use rights in respect of immovable property, including agricultural and commercial property,

where the claimant is not now able to exercise such property rights.

**Judicial review:** Decisions issued by the KPCC, subject to appeal to the Supreme Court of Kosovo acting as a second instance, are binding and legally enforceable.

**Execution of decisions:** Possibilities for the execution of a decision include, but are not limited to: eviction, placing the property under administration, a lease agreement, seizure of unlawful structures, auction and compensation.

**Caseload:** Currently, the KPA has taken 29,746 claims.

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## II. Strategies on property restitution

- UNMIK develops a domestic set of political standards during 2004 which would evaluate progress on institution building in Kosovo before the UN Security Council with a view to start a process to define Kosovo's international status.
- **Standard VI (Property Rights)**, within the Kosovo Standards Implementation Plan, contained an overview of goals, actions, responsible actors and deadlines aimed, inter alia, to ensure housing and property restitution in Kosovo.
- “The fair enforcement of property rights is essential to encourage returns and the equal treatment of all ethnic communities. This requires that there is effective legislation in place, that there are **effective property dispute resolution mechanisms**; that rightful owners of residential, commercial and agricultural lands are able to take effective possession of their property and that there is an accurate system for transfer, encumbrance and registration of property as well as the prevention of coerced property sales.”

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## II. Strategies on property restitution

The '**Property Standard Implementation Group**' is a co-ordination and evaluation body. It is co-chaired by Minister of Environment and Spatial Planning and OSCE Mission in Kosovo. The members include:

- Kosovo Property Agency
- Kosovo Cadastre Agency
- Municipal courts
- Municipalities
- Police

Regular meetings to evaluate progress in the implementation of the 'Property Rights Standard' and recommend further steps to the participants.

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## II. Strategies on property restitution

### The 'Property Rights Standard'. A programmatic action plan for the Kosovo institutions (extract):

<b>4. The Police enforce these decisions (on property claims) routinely and without discrimination.</b>	4.1 Conclude inter-agency or other agreements required to enforce property related decisions of municipalities, HPD/CC, etc..	Pillar I (Police) , Municipalities	Pillar I, Pillar II	Mid 2004
	4.2 Adequate police resources, including training, directed towards enforcing these decisions efficiently.	Pillar I (Police)		Ongoing

## II. Strategies on property restitution

### Property restitution in the ‘Property Standard’:

<b>5. The HPD and the HPCC have effectively resolved their backlog of cases.</b>	5.1 Adequate resources (funding—including KCB funds—and otherwise) allocated to HPD and HPCC.	PISG (Assembly)	Pillar II, O/SRSG	May 2004 and ongoing
	5.2 The relevant authorities throughout Kosovo co-operate and co-ordinate with the HPD/HPCC and respect the rights confirmed by HPCC decisions (including ownership and occupancy rights). In particular, the police provide HPD adequate support when the HPD is enforcing evictions.	Municipalities, PISG (Courts, MPS/DJA), Pillar I (Police)	Pillar II (HPD), Pillar I	July 2004 and ongoing
	5.3 Establish a claims notification system between HPD/HPCC and regular courts (See also 3 above).	PISG (MPS/DJA)	Pillar II (HPD)	July 2004 and ongoing
	5.4 HPD and HPCC complete adjudication of claims with respect to due process and in a non-discriminatory fashion.	Pillar II (HPD)		Early 2005
	5.5 HPD and HPCC implement their decisions with respect to due process and in a non-discriminatory fashion.	Pillar II (HPD)	Pillar I (Police)	End 2005
	5.6 Devise action plan for Kosovo institutions to accept the handover of HPD/HPCC files and properties under HPD administration.	Municipalities, Courts, MPS/KCA	Pillar I (Justice), Pillar II (HPD), Pillar IV (KTA)	January 2005



## II. Strategies on property restitution

Development of a solution to agricultural and commercial property as a standard goal (below).

<b>6. There is an effective system to remedy disputes over agricultural and commercial property.</b>	6.1 Evaluate effectiveness of existing implementing and enforcement structures/mechanisms related to regulating use of agricultural and commercial property, including their compliance with European human rights and regulatory standards, especially related to non-discrimination and gender equality. Finalise and implement an action plan for strengthening them, including enacting necessary legislation.	PISG (Government, MESP, MPS (KCA), MAFRD, Municipalities, Courts, Assembly)	Pillar I (Police and Justice), Pillar IV (KTA)	May 2004 and continuing
	6.2 Enforce vigorously and without discrimination existing laws regulating unauthorized use, illegal occupation, and/or illegal cultivation of agricultural and commercial land, including remedies mechanisms (see also 2, 3,4).	Municipalities, PISG (Courts), Pillar I (Police)	Pillar II, PISG (MPS/DJA, MESP, MAFRD), Pillar IV (KTA)	Ongoing
	6.3 Municipal authorities, police, and courts coordinate amongst themselves as necessary.	Municipalities, PISG (MPS/DJA)	Pillar I (Police), Pillar II, Pillar IV (KTA)	May 2004 and ongoing
	6.4 Mediation bodies with guarantees to protect against discrimination on the basis of ethnicity, gender, etc, such as Mediation Committees, are used to resolve disputes and their decisions implemented accordingly (See also Rule of Law standard, 15.1 for establishment).	Municipalities, PISG (Courts)	Pillar II	Ongoing

## II. Strategies on property restitution

### **European Partnership Action Plan (EPAP)**

- Strengthen municipal courts and police action to prevent, sanction and address illegal occupation, use and construction of property.
- Illegal occupants have been evicted from properties and the property is returned to its rightful owner.
- Develop and implement a strategy including sustainable successor arrangements to the Housing and Property Directorate in order to implement all outstanding residential property claims.
- Complete legislation and actions to safeguard property rights notably on ownership possession; occupancy and rights to residential and non-residential property including the legislative framework to regulate construction. Harmonise municipal regulations and establish a mechanism for the effective resolution of commercial and agriculture property disputes. Increase public awareness on consequences of illegal construction.



## II. Strategies on property restitution



Goals of the 2005 campaign ‘Illegal Occupation is not a solution’:

To help change social perceptions and attitudes towards the property law implementation process and contribute to strengthen the legitimacy of the laws by supporting the notion that illegal occupation is not acceptable, and

~~Discourage potential future illegal occupation from occurring.~~



YOU ARE DISPLACED - YOUR RIGHTS ARE NOT

CONFERENCE ON SUSTAINABLE PROPERTY RESTITUTION AND SOLUTIONS TO DISPLACEMENT IN KOSOVO DURING TRANSITION

Prishtinë/Prishtina, Grand Hotel, 26 and 27 November

# HAVE YOUR PROPERTY RIGHTS BEEN VIOLATED LEGAL REMEDIES EXIST!

*Property Rights are Human Rights*

*'Every natural or legal person is entitled to the peaceful enjoyment of his possessions (...)'*

Article 1, Protocol 1, European Convention for the Protection of Human Rights and Fundamental Freedoms



## PROTECTION OF PROPERTY RIGHTS THROUGH THE INSTITUTIONS OF KOSOVO

Kosovo has institutions mandated to protect your property rights.

Currently, the main bodies competent to adjudicate claims on private immovable property are the  
**Kosovo Property Agency (KPA) and the Kosovo Courts.**

OSCE Mission in Kosovo awareness campaign on property related remedies – September 2007



## II. Strategies on property restitution

- Did the HPD/HPCC (now KPA) provide the successful claimants with an effective remedy?
- In international human rights law terms, a remedy needs to be a) accessible, b) independent and c) 'effective'

### A. Accessibility.

- A. Claims process was accessible. Mobile teams and external offices provided access to displaced persons.
- B. Information on process and remedies offered improved progressively.
- C. Adequate information for particularly vulnerable groups such as Kosovo Roma/Ashkaeli and Egyptian was challenging. Often individuals belonging to such groups lack documents and/or registered title. Other agencies supported HPD/HPCC and KPA in helping ensure access to information.
- D. Call centre since 2003. Comprehensive website with updated factual information.

### B. Independence and fairness

- HPD/HPCC gradually earned a reputation of impartiality.
- UNMIK Reg. 2000/60 attempts to strike a fair balance between effectiveness and fairness in the Kosovo context.
- Housing and Property Claims Commission, appointed by the UNMIK SRSG, decisions subject to reconsideration.
- Commissioners could only be removed from office on the recommendation of the majority of HPCC members.
- Possibility of establishment of additional panels in reconsideration requests to ensure independent review.
- High responsibility of Directorate in processing written submissions and documentary evidence due to lack of public hearings.
- No presumptions or inferences on discrimination in A and B claims.
- Limit of HPCC to rights of possession, question as to long term sustainability of HPCC decisions.
- Destroyed properties and HPCC decisions. Value of declaratory orders.
- Issue of dismissed category A claims due to non compliance with all requirements of Law on Housing (i.e., no contract on use). Solved through agreement with Kosovo Trust Agency (A1 claimants creditors to respective companies).
- Kosovo Property Claims Commission, decisions subject to appeal to a mixed panel of the Supreme Court authorized by the UNMIK SRSG.

## II. Strategies on property restitution

### C. Effectiveness:

- ❑ Remedies provided by HPD/HPCC: restitution in kind, registration (B claims), compensation in limited cases. Claims for compensation for damage are excluded. KPA/PCC provides additional remedies (auction, demolition of unlawful structures) for successful claims over land.
- ❑ Difficult to assess effectiveness due to lack of comparable examples. Bosnia had different problems:
  - Complex legal issues in Kosovo
  - Displaced and/or not updated cadastre
  - More contested claims than in Bosnia and Herzegovina
  - No presumptions and inferences
  - CRPC had no enforcement responsibility. (See 'An Evaluation of the HPD, 1999-2006, De Medina).
- ❑ Lack of adequate resources: delays in funding complicated the operation at the early stages. Lack of staff and IT resources in the first years hampered the process. Later this was addressed.
- ❑ UN HABITAT initial administration of HPD/HPCC was difficult operationally and delayed implementation of the mandate. Lengthy bureaucratic procedures, lack of effective coordination.
- ❑ Limited resources affected mediation efforts.
- ❑ Agreement between HABITAT and Republic of Serbia not operational until November 2001.
- ❑ Right to access to a court (Article 6, ECHR) and length of proceedings. Need to focus on categories of claims and not on chronology in a mass process.
- ❑ Lack of early definition of a mechanism for agricultural and commercial property claims delayed process until 2006. Agricultural and commercial property claims did not fall within the initial mandate of the HPD/HPCC as set up by UNMIK Regulations 1999/23 and 2000/60. The non-existence of an exclusive mandate for agricultural and commercial property claims and a defined strategy prior to 2004 delayed the transformation of the HPD/HPCC in the Kosovo Property Agency (KPA) and the extension of its mandate to cover agricultural and commercial claims.
- ❑ Lack of clearly defined positive obligations of Kosovo local and central government towards the HPD/HPCC and later KPA. Political obligations based on standards were only partially fulfilled and after substantial pressure (i.e., support to rental scheme)
- ❑ Instances obstruction led to temporary suspension of the enforcement of HPCC decisions by the UNMIK SRSG as recently as July 2007.
- ❑ Instances of conflicts of jurisdiction with the courts took place throughout HPD/HPCC and KPA's mandate.

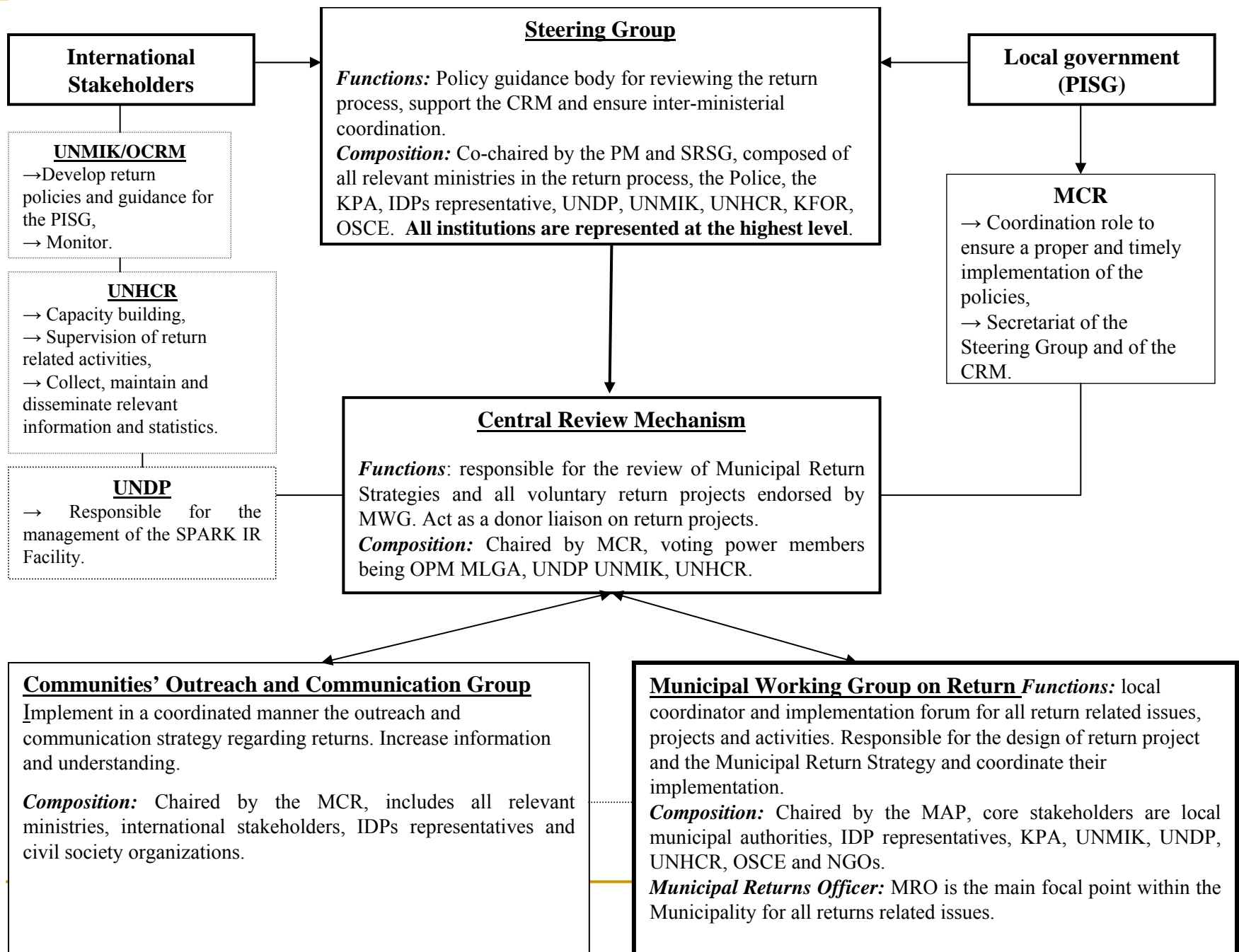
## II. Strategies on property restitution

### ■ Factors hindering effectiveness (2)

- ❑ Lack of capacity of Municipalities to provide social housing for secondary occupants affected individuals.
- ❑ Lack of effective response of municipal authorities in preventing unauthorized constructions on displaced persons' properties Conflicts of jurisdiction with the Kosovo courts.
- ❑ Draft domestic legislation potentially adversely affecting pre-1999 occupancy rights (Draft Law on the Sale of Apartments where Occupancy Rights Exist)
- ❑ Obstruction by government and private actors to the enforcement of HPD/HPCC decisions (case of Klina Municipality).
- ❑ Punctual misapplication of procedures by Police in cases of re-occupation after an eviction.
- ❑ Additional delays in the status transition could affect entrenchment of KPA in a future statehood arrangement not based in the Status Proposal developed by the UN Special Envoy, Mr. Attisaahri
- ❑ Uncertainties linked to status may affect sustainability of HPCC and Kosovo Property Claims Commission decisions
- ❑ Mass implementation to allow return to particular geographic locations was not used as a method.
- ❑ March 2004 riots in practice temporarily halted enforcement of HPCC decisions and provoked the displacement of 4,000 persons.
- ❑ Need for the promulgation of legislation related to cases involving compensation (A and C claims).
- ❑ Implementation resulting in sales. In general terms, displaced persons generally were finally able to have their residential property administered by KPA and/or to repossess it. However, the general tendency was to sell. This was both due to an environment non conducive to returns as well as to an excessive length of proceedings (in turn, provoked by the initial operational and funding difficulties faced by the HPD/HPCC).



## RETURNS AND REINTEGRATION STRUCTURE IN KOSOVO



### III. Strategies on return and reconstruction

#### Challenges to the return and reintegration process:

- Weak return structures and inadequate environment. The structures supporting the returns and reconstruction of destroyed houses of minority communities were established late (in 2002) and with no connection with the restitution process.
- The structures were based on weakly, non-legally entrenched mechanisms (a 'Manual on Sustainable Returns' broadly describing responsibilities guided the process).
- A 2006 'Protocol on Voluntary and Sustainable Return' signed by UNMIK, the Government of Kosovo and the Republic of Serbia sought to establish an administrative process for enabling reconstruction assistance upon request by the displaced. However, this was not implemented.
- Displaced persons do not feel secure enough or with sufficient adequate living opportunities (employment, public services) in Kosovo to return home. The March 2004 Riots displaced 4,000 persons and reinforced the sense of insecurity.
- Non-provision of adequate housing and/or land to the displaced. Displaced persons continue to live in inadequate housing conditions. There are no clear programmes or procedures in place to address these situations.

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## IV Concluding questions & possible lessons identified

### ■ Restitution programmes

- ❑ Need to be comprehensive, coherent, coordinated from the onset, ideally with return and reconstruction structures;
- ❑ In Kosovo, the situation changed a lot from design to implementation: the initial assessment of the needs of each situation is crucial to optimise resources;
- ❑ Need for the programme to be balanced and flexible and make appropriate provision for short, medium and long-term needs;
- ❑ Appropriate human & financial resources must be made available for the programme;
- ❑ It must be both reasonably conceived and implemented;
- ❑ It must be transparent, and its contents must be made known effectively to the public;
- ❑ Mass claims mechanisms have less financial implications and are more efficient than courts, however a form of domestic judicial review should help legitimise the mechanism and ensure long term sustainability.



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## IV Concluding questions & lessons identified

- What needs to be in place to ensure adequate funding from the initial stages up to the completion of the mandate?
- How should the initial assessment and design of the mechanism be undertaken to ensure effectiveness and avoid subsequent delays?

Returns, resettlement and reconstruction structures:

- What should the relation be between return programmes and property restitution?
- If conditions are not conducive to return, is repossession an appropriate and/or effective remedy?
- What other methods could be used to promote return of the displaced?
- Are geographically concentrated mass evictions a feasible option?
- What type of remedy should be offered in situations where property is destroyed?
- Could administration of properties have prevented destruction and facilitated return?
- Are compensation schemes a feasible option?
- Which responsibilities should be undertaken by local and central governments?
- What should be in place for individuals belonging to vulnerable groups and lacking registered title and/or documents?

THANK YOU!  
ANY QUESTIONS?

